IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: DOTSE JSC (PRESIDING)

LOVELACE-JOHNSON (MS.) JSC

AMADU JSC

PROF. MENSA-BONSU (MRS.) JSC

ASIEDU JSC

CIVIL APPEAL

NO. J4/87/2022

29TH MARCH, 2023

WRANGLER GHANA LTD. …… PLAINTIFF/APPELLANT/RESPONDENT

VS

1. **SPECTRUM INDUSTRIES PVT. LTD. …… 1ST DEFENDANT/RESPONDENT/APPELLANT**
2. **LANDS COMMISSION …… 2ND DEFENDANT/RESPONDENT**

JUDGMENT

ASIEDU JSC:-

INTRODUCTION:

On the 19th day of December 2016, the Plaintiff/Appellant/Respondent (hereinafter referred to as the Plaintiff/Respondent) issued a writ of summons against the Defendant/Respondent/Appellant in the High Court, Accra for reliefs in the nature of a declaration of title to land, recovery of possession, damages for trespass and an order of perpetual injunction. After the hearing of the matter, the learned Judge of the trial High Court dismissed the Plaintiff/Respondent's claims and entered judgment in favour of the Defendant/Appellant. Aggrieved by the decision of the trial High Court, the Plaintiff/Respondent appealed to the Court of Appeal which, after considering the appeal, set aside the judgment of the High Court and entered judgment for the Plaintiff/Respondent for the reliefs claimed by the Plaintiff/Respondent. As expected, the Defendant/Appellant filed an appeal on the 4th day of July 2022 before this Court against the judgment of the Court of Appeal. According to the Defendant/Appellant, *"the entire judgment of the Court of Appeal dated 28th April 2022, be reversed and the appeal allowed by affirming the decision of the trial Court."* The grounds of appeal, as stated in the Notice of Appeal are that:

a. *The Court of Appeal erred in holding that the 1st Defendant/Respondent/Appellant was unable to prove that the gift was obtained by fraud when 1st Defendant/Respondent/Appellant's allegation of fraud was in respect of the registration of the deed of gifts at the Lands Registry and not the grant.*
b. *The Court of Appeal erred when it considered the issue of vesting assent and capacity when same was not an issue before the trial court which would have afforded the 1st Defendant/Respondent/Appellant the opportunity to provide the required proof.*
c. *The Court of Appeal erred when it failed to make a determination on the allegation of fraud leveled against the 1st Defendant/Respondent/Appellant and 2nd Respondent.*

d. *The Court of Appeal erred when it failed to consider properly the fact that once the gift was denied by the grantors of the 1st Defendant/Respondent/Appellant, the presence of the Plaintiff/Appellant/Respondent's grantor to testify at the trial was crucial in satisfying the evidential burden placed on the Plaintiff/Appellant/Respondent in an action for declaration of title.*
e. *The judgment is against the weight of evidence.*
f. *That additional grounds of appeal to be filed upon receipt of Records of Appeal.*

It must be placed on record that the Defendant/Appellant has, since the receipt of the record of appeal, not filed any additional grounds of appeal, hence; the appeal was heard in respect of the grounds of appeal stated in the Notice of Appeal.

FACTS OF THE CASE:

The facts of the case are that the Plaintiff/Respondent acquired a parcel of land situate, lying and being at Baatsona, by a leasehold in 2012 from one Christian Besah Yao Ahiabor. The Plaintiff's lessor had previously acquired a larger track of land including the parcel granted to the Plaintiff from Joseph Abli Charway and registered same at the Deeds Registry. Joseph Abli Charway had also previously, acquired his land from the Nungua Stool. The children of Joseph Abli Charway who are the 1st Defendant's grantors herein, contest the interest of Christian Besah Yao Ahiabor notwithstanding the fact that his land holding is registered with the Lands Commission. In the process of registering his documents at the Land Title Registry, the Plaintiff was informed that the 1st Defendant had also presented documentation for the registration of the same land that the Plaintiff/Respondent had applied to register. The Plaintiff/Respondent filed a caveat but the 2nd Defendant, who was later joined to the suit, went ahead and registered the land in the name of the 1st Defendant and issued her with a Land Title Certificate. The Plaintiff company therefore issued the instant writ for the reliefs endorsed thereon. After the hearing of the case, the High Court entered judgment for the Defendant/Appellant herein

and dismissed the Plaintiff/Respondent's claim. An appeal was therefore lodged before the Court of Appeal by the Plaintiff/Respondent. The Appeals Court entered judgment for the Plaintiff/Respondent herein after the hearing of the appeal and granted the reliefs sought by the Plaintiff/Respondent. Dissatisfied with the judgment of the Court of Appeal, the Defendant/Appellant has appealed to this Court seeking the reliefs on the grounds stated above.

CONSIDERATION OF THE GROUNDS OF APPEAL:

Ground (a) states that *"the Court of Appeal erred in holding that the 1st Defendant/Respondent/Appellant was unable to prove that the gift was obtained by fraud when 1st Defendant/Respondent/Appellant's allegation of fraud was in respect of the registration of the deed of gift at the Lands Registry and not the grant."*

By this ground of appeal, the 1st Defendant seeks to create the impression that his plea of fraud attacked only the ***registration*** of the Deed of Gift made to the Plaintiff's grantor, Christian Besah Yao Ahiabor and not the ***gift*** itself.

On this ground of appeal Counsel submitted that "*the allegation of fraud made by the Appellant and contained in the Appellant's statement of defence was in respect of the registration of the deed of gift in the Respondent's grantor's name…. It was the registration in his name which was procured by fraud and not the grant of the gift itself".* We think that the above argument adds to the confusion embedded in this ground of appeal. For, if the contention is that it is the registration of the deed of gift which was procured by fraud and not the gift itself, then the Appellant seeks to say that the gift was valid except that its registration, after it had been reduced into writing, was fraudulent. We therefore wish to ask that if the gift itself was valid then what is the point in complaining about the registration since the validity of a gift, at customary law, does not derive from its registration but from the fact that all the customary requirements for the validity of a gift had been satisfied.

The Defendant/Appellant's plea of fraud as far as the instant matter is concerned can be found at paragraph 18 of its statement of defence. In the said paragraph, the Defendant averred as follows:

> *"18. The Defendant says that the inconsistency in Plaintiff's grantor's statements raises doubt and goes to confirm Defendant's grantor's position that Christian Besa Yao Ahiabor procured the registration in his name through fraud.*
>
> *PARTICULARS OF FRAUD:*
>
> - *Deed of gifts being relied on by Plaintiff's grantor was never witnessed by the named Witnesses in the documents.*
> - *The said Witness never appended his signature to the documents relied on by Plaintiff's grantor.*
> - *The Defendant's grantor's father was an illiterate (cannot read and write) who purportedly thumb printed the Deeds of Gift and signed his name against it.*
> - *Plaintiff's grantor states that it was a Deed of Gift and register it as a deed of gift but states on oath that he bought the land and was given receipts for the payment.*
> - *Failure to perform the customary requirement of publicity as there were no witnesses to support Plaintiff's grantor's customary aseda."*

A close scrutiny of the averment in this paragraph of the Defendant/Appellant's statement of defence shows that apart from mentioning that Christian Besa Yao Ahiabor, the Plaintiff's grantor, procured the registration in his name through fraud, the particulars of fraud given do not come any close to showing that the registration of the Deed of Gift by the Plaintiff's grantor was obtained by fraud. The particulars, as stated above, do not in the least allege fraud against the registration of the Deed of Gift by the grantor of the Plaintiff. The criticism leveled against the judgment of the Court of Appeal in this ground of appeal is therefore without any sound footing. All the allegations made

in the particulars are about the witnesses to the Deed of Gift. It must be pointed out that an allegation of fraud without more is at large and unless particulars are given it becomes difficult if not impossible to see the reason behind the allegation. It is the need to avoid this difficulty and uneasiness, among others, that the Rules of Court demands that particulars be given of any such allegation. We wish to point out therefore that it is not for nothing that the High Court (Civil Procedure) Rules, 2004 CI.47 (as amended) states in Order 11 rule 12(1)(a) that:

> *"12. Particulars of pleading*
>
> *(1) Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, but without prejudice to the generality of the foregoing words,*
>
> *(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies"*

The idea behind the need to give particulars is to ensure, as it were, that litigation between parties to a suit is conducted in a very fair and open manner and without surprises to either side. Thus, the function of particulars includes the need

> *"(a) to inform the other side of the nature of the case that they have to meet as distinguished from the mode in which that case is to be proved; (b) to prevent the other side from being taken by surprise at the trial; (c) to enable the other side to know with what evidence they ought to be prepared and to prepare for trial; (d) to limit the generality of the pleadings or of the claim or the evidence; (e) to limit and define the issues to be tried, and as to which discovery is required; and (f) to tie the hands of the party so that he cannot without leave go into any matters not included.*
>
> *Whenever either party is imputing fraud, negligence or misconduct to his opponent, the facts must be stated with especial particularity and care. … The Court will require of him*

who makes a charge that he must state that charge with as much definiteness and particularity as may be done, both as regards time and place"

See; The Supreme Court Practice. 1995, Volume 1 Published by Sweet & Maxwell. Pages 306 to 307.

We wish to state that the particulars which the Defendant/Appellant gave in paragraph 18 of the statement of defence do not support its allegation of fraud that "*Christian Besa Yao Ahiabor procured the registration in his name through fraud".* Given the nature of the allegation in paragraph 18, the Defendant/Appellant should have given particulars which show that the registration of the Deed of Gift in the name of the Plaintiff's grantor was indeed procured by fraud. That being so, the Defendant/Appellant cannot turn around and accuse the Court of Appeal, as it seeks to do, by ground one of its grounds of appeal.

It must be noted that in its Reply, the Plaintiff/Respondent herein denied at paragraph 9 thereof the allegation of fraud made in connection with the registration of the Plaintiff's grantor's Deed of Gift and indeed whatever allegation that is contained in paragraph 18 of the statement of defence. The implication of the denial in the Reply is that a duty was cast upon the Defendant/Appellant to adduce credible evidence to prove whatever allegation of fraud that the statement of defence makes, particularly, in the said paragraph 18 as required by sections 12, 13, 14 and 17 of the Evidence Act, 1975, NRCD 323 which states that:

"12. Proof by a preponderance of the probabilities

(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

(2) "Preponderance of the probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.

13. Proof of crime

(1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.

(2) Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.

14. Allocation of burden of persuasion

Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting.

17. Allocation of burden of producing evidence

Except as otherwise provided by law,

(a) the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof;

(b) the burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact."

Thus, within the meaning of sections12,13,14 and 17 of NRCD 323 as quoted above, whenever a party to a civil suit makes a positive averment which is crucial to a claim or defence which he had asserted in his pleading and which had been denied by his opponent and the party wishes to succeed on that claim or defence, then the law enjoins that party to adduce that kind of credible evidence, in relation to the assertion made, within the meaning of section 17 as quoted above, which will establish that degree of belief in the mind of the court, in accordance with the provision contained in section 12 of NRCD 323, that the existence of the fact(s) which he had asserted (but which had been

denied by his opponent) is more probable than its non-existence. However, if the assertion made by the party borders on criminality, then the law enjoins the party (pleader) to adduce that kind of evidence to establish that degree of belief in the mind of the court beyond any reasonable doubt that the facts as asserted exist as required by section 13 of NRCD 323. See **Adwubeng vs. Domfeh [1997-1998] 1 GLR 282; and, Aryeh & Akakpo vs Ayaa Iddrisu [2010] SCGLR 891.**

In relation to the instant matter therefore, since the plea of fraud made by the Defendant/Appellant in paragraph 18 of its statement of defence had been denied by the Plaintiff/Respondent in paragraph 9 of its Reply, the law imposes a duty on the Defendant/Appellant (as the pleader) to provide credible evidence in proof of fraud; and, in this case, since the allegation of fraud is a criminal offence, the standard of proof required by law is proof beyond reasonable doubt.

In the Witness Statement of Ernest Daniels, Head of Operations of the Defendant Company, who testified for the Defendant/Appellant, which can be found at pages 201AV to 201AX, not a single paragraph was devoted in proof of the allegation in paragraph 18 that "*Christian Besa Yao Ahiabor procured the registration in his name through fraud*". It is in paragraph 11 of the Witness Statement, at page 201AW of the record of appeal, that Ernest Daniels testified that:

> *"I am firm in my belief that the deeds of gift being relied upon by the Plaintiff's grantor are fraudulent because the persons named in the deeds of gift as witnesses have all denied flatly ever witnessing or signing documents to that effect"*

Similar testimony was given by Dennis Aryee Charway (DW1), a child of Joseph Abli Charway who holds a power of attorney donated by the administratrixes of the estate of Joseph Abli Charway, at paragraphs 10 and 11 of his Witness Statements which can be found at page 201AZ of the record of appeal.

The question which naturally comes to mind about these testimonies is where on earth did those witnesses deny ever witnessing or signing the Plaintiff/Respondent's grantor's deed of gift? For, there is no evidence on record that the said witnesses were invited by the Defendant/Appellant to give evidence in respect of the matters attributed to them and also make themselves available for cross examination. The evidence of Ernest Daniels and Dennis Aryee Charway DW1, as far as the alleged fraud is concerned, therefore, is inadmissible hearsay since the evidence falls short of the requirements of sections 116, 117 and 118(1) of the Evidence Act, 1975, NRCD 323. It implies therefore that the Defendant/Appellant failed to prove the so-called allegation of fraud against the Plaintiff's grantor. If it is true that the said witnesses denied ever appending their signatures to the deeds of gifts and indeed did not witness those documents, what prevented the Defendant/Appellant from getting those witnesses to testify so they could be subjected to cross examination in order to ascertain the veracity of those alleged claims in view of the potential which their evidence would have had in determining the validity of the deeds of gift. We think that the said witnesses are very material to the resolution of the allegation of fraud raised in paragraph 18 of the statement of defence. As stated by this court in **Tetteh vs The Republic [2001-2002] 1 GLR 200**

> *"Whether or not a witness was a material witness depended on the quality and content of the evidence he was expected to offer in relation to the case on trial. He would be deemed to be material if the evidence expected from him was deemed to be so vital as to be capable of clearly resolving one way or the other, an important and decisive issue of fact in the controversy. The evidence had to appear likely to have a profound impact on the facts of the case to the extent that if it was accepted as true it would compel the court to come to a conclusion that was different from the decision given."*

The effect of the failure of the Defendant/Appellant, in the instant matter, to call the said witnesses to testify as to the matters attributed to them in the pleadings and the witness

statements of the Defendant, in respect of the allegation and particulars of fraud, is that the assertion that the said witnesses have denied ever signing and witnessing the deeds of gift remains unproven with the consequence that the Defendant/Appellant has not succeeded in proving fraud against the Plaintiff/Respondent.

Indeed, under cross examination the witness for the Defendant/Appellant, Ernest Daniels gave the following answers to questions put to him which can be found at page 280 of Volume 2 of the ROA:

> *"Q. If Mr. Ahiabor were a party in this case, can you on your own stand and defend the case against him, that he acquired his interest in the land by fraud?*
>
> *A. I don't have any dealing with Mr. Ahiabor, it is the Charways we are dealing with*
>
> *Q. So you agree with me that you cannot contest any case against Mr. Ahiabor before this court?*
>
> *A. Yes, I do."*

From the above answers, it is clear that the Defendant/Appellant admits that it has no concrete proof of any fraud committed by the Plaintiff's grantor concerning his deeds of gift. The trial court as well as the Court of Appeal therefore rightly concluded, in our view, that the Defendant/Appellant failed to prove their so-called allegation of fraud against the Plaintiff's grantor concerning the deeds of gift which he obtained from Joseph Abli Charway, the father of DW1 and the Defendant/Appellant's grantors.

Further, in pursuit of its claim of fraud, the Defendant/Appellant procured DW1 to tender in evidence at the trial a Witness Statement, exhibit 9 herein, which was, allegedly, made by the Plaintiff's grantor in a case between him and the Defendant's grantor pending before the High Court, Tema. The title of that case is given as E1/107/2014. Exhibit 9 can be found at pages 201BR to 201BU, Volume 1 of the record of proceedings. In respect of

exhibit 9, the Defendant/Appellant had pleaded at paragraph 16 of its statement of defence that:

> *"16. The Defendant says that the Plaintiff's grantor Christian Besa Yao Ahiabor has indicated on oath in his witness statement in Suit No. E1/107/2014 supra that he actually bought the land from Joseph Abli Charway and was given receipts to that effect."*

In his witness statement, the Defendant's representative, Ernest Daniels did not give any evidence concerning exhibit 9. However, DW1, Dennis Aryee Charway who testified in support of the Defendant/Appellant's case stated at paragraph 12 of his witness statement which can be found at page 201AZ of the record that:

> *"12. I am also convinced that the deeds used to plot the Plaintiff's grantor's name is fraudulent because the Plaintiff's grantor had indicated in his witness statement in an earlier suit Dennis Aryee Charway vs. Steel Wire Drawing & Another Suit No. E1/107/2014 that he actually bought the land from our father Joseph Abli Charway and was given receipt to that effect. Based on this, the Plaintiff's grantor could not have deposited at the Lands Registry for registration his interest deeds of gift if indeed he bought the land."*

The trial Judge made no findings of fact on exhibit 9 except to say that it was not challenged by the Plaintiff/Respondent. However, the Court of Appeal found as a fact that exhibit 9 was an unsworn exhibit and therefore should not have been admitted by the learned trial Judge. The Court of Appeal therefore struck out exhibit 9.

A close examination of the pleading in paragraph 16 of the statement of defence quoted above and paragraph 12 of the witness statement of DW1 shows that exhibit 9 was tendered for the sole purpose of showing that the Plaintiff's grantor spoke with double tongue on how he acquired the land he registered including the land leased to the Plaintiff/Respondent herein as evidenced by exhibits A, C, D, and E. The

Defendant/Appellant seeks to say that whereas in exhibits C, D and E, the Plaintiff's grantor says that he acquired that large tract of land by way of a gift from Joseph Abli Charway, in exhibit 9, of the witness statement, he now says that he acquired the land by way of purchase from the said Joseph Abli Charway. The trial Judge therefore acted on exhibit 9 to fault the deeds of gift in favour of the Plaintiff's grantor and by extension the Plaintiff for the reason that no averment was made in denial of exhibit 9 in the Plaintiff's Reply to the Statement of Defence.

The instant suit was filed in the High Court (Land Division) Accra whiles exhibit 9 is a witness statement filed in the High Court (Land Division) Tema in a suit totally different from the suit herein involving parties different from the parties to the suit the subject of this appeal.

Under cross examination, DW1, who tendered exhibit 9, gave answers to the following questions:

> *Q. The case that is in Tema, have you started the hearing, like you are sitting in the Witness Box?*
>
> *A. No my lord*
>
> *Q. So Ahiabor has not gone into the Witness Box and sworn to this witness statement. Is that so?*
>
> *A. That is true.*

Thus, contrary to the averment in paragraph 16 of the statement of defence that the Plaintiff's grantor had sworn on oath in his witness statement, exhibit 9 herein, it is clear that no such oath had been taken by the Plaintiff's grantor in respect of exhibit 9. It follows therefore that the admission of exhibit 9 violates the clear provisions of section 61 of the

Evidence Act, 1975, NRCD 323 as well as section 62(1) of the Courts Act, 1993, Act 459 which states that:

> *"61. Oath or affirmation required*
>
> *Subject to an enactment or a rule of law to the contrary, a witness before testifying shall take an oath or affirmation that the witness will testify truthfully and a statement made by a witness without the oath or affirmation shall not be considered as evidence."*

Section 62(1) of the Courts Act, 1993, Act 459 also states that:

> *"62. Examination of witnesses*
>
> *(1) Subject to the applicable enactment or the relevant rule of law to the contrary, a Court shall require a witness to be examined on oath."*

A party has no right to import a witness statement filed in a suit or proceedings into an entirely different suit. This is because witness statements are suit specific. Witness statements, with a few exceptions, are meant to be used only for the proceedings in the suit in which they are filed. For that reason, Order 38 rule 3G of the High Court (Civil Procedure) Rules, 2004, CI 47 (as amended) [See Rule 4 of CI. 87] provides that:

> *"3G (1) Except as provided by this rule, a witness statement may be used only for the purposes of the proceedings in which the witness statement is served.*
>
> *(2) Subrule 1 does not apply if and to the extent that,*
>
> *(a) the witness gives consent in writing for some other use of the witness statement;*
>
> *(b) the court grants leave for some other use; or*
>
> *(c) the witness statement has been put in evidence at a hearing held in public"*

In the instant matter, it has not been proved that Christian Besa Yao Ahiabor, whose statement, allegedly, was admitted in evidence by the trial Judge as exhibit 9, had given

his consent in writing for the use of the alleged witness statement in this very case. There is equally no evidence that, leave was sought and obtained from the trial Judge before the witness statement, exhibit 9, was put in evidence and finally, there is no evidence that exhibit 9 had been admitted in evidence at a hearing held in public. It was therefor wrongful, on the part of the trial Court, to have admitted exhibit 9 in evidence and even more wrongful for the trial Judge to seek to rely on exhibit 9, under the pretext that it was not denied by the Plaintiff/Respondent in pleading. Exhibit 9 as it were, offends both the Rules of Court as well as substantive Acts of Parliament as shown herein and so inadmissible per se and for that matter whether the Plaintiff/Respondent denied it or not, it cannot be admitted in evidence and relied upon in the evaluation of the evidence. See, **Republic vs High Court (Fast Track Division) Accra; Ex parte National Lottery Authority (Ghana Lotto Operators Association & Others Interested Parties) [2009] SCGLR 390**.

Again, during the cross examination of DW1 in respect of the said exhibit 9, the following questions, among others, was put to DW1 as shown at page 285 to 286 Volume 2 of the record:

> *"Q. Please look at the exhibit attached to your witness statement that is exhibit 9. Have you seen it?*
>
> *A. Yes, my lord.*
>
> *Q. Look at the witness statement, if you look from paragraph 7 up to the end of Ahiabor's statement (paragraph 27) he has attached exhibits Ca to Ca8i, have you seen it?*
>
> *A. Yes, my lord*
>
> *Q. You have not attached those exhibits to the witness statement of Ahiabor here.*
>
> *A That is true."*

Quite clearly, the said exhibit 9, as admitted in the answers given by DW1 above, is an incomplete document and inadmissible document for want of the missing and unattached exhibits which have been referred to in the said exhibit and thus casting doubt on the authenticity of exhibit 9.

One other issue about exhibit 9 is that whereas the Defendant's representative says that the land in issue before the High Court in the instant matter is not part of the land in issue before the High Court, Tema [See page 281 Vol.2 of the ROA]; DW1 insisted, during cross examination, that the land in issue herein is part of the land subject matter of the suit before the High Court at Tema. [See page 286 Vol.2 of the ROA]. Clearly, there is a conflict in the evidence of the Defendant's representative and the witness of the Defendant/Appellant, DW1 herein which again casts doubt on the relevance of exhibit 9.

Further, the authenticity of exhibit 9 has not been proven; in that, it does not bear the certification of the Registrar of the Tema High Court as duly certified that it was coming from the High Court, Tema. Hence, exhibit 9 contradicts section 162 of the Evidence Act, 1975, NRCD 323 which provides that:

> *"162. Copies of writings in official custody*
>
> *A copy of a writing is presumed to be genuine if it purports to be a copy of a writing which is authorised by law to be recorded or filed, and has in fact been recorded or filed in an office of a public entity or which is a public record, report statement or data compilation if*
>
> *(a) an original or an original record is in an office of a public entity where items of that nature are regularly kept, and*
>
> *(b) the copy is certified to be correct by the custodian or other person authorised to make the certification where the certification must be authenticated."*

The sum total of the discussion above shows that the Defendant/Appellant herein could not prove its allegation of fraud against the grantor of the Plaintiff with the consequent effect that the grants made by Joseph Abli Charway to Christian Besa Yao Ahiabor remains valid with the overall effect that the grant to the Plaintiff/Respondent herein is also valid. An allegation of fraud ought to be proved beyond all reasonable doubt as required by law. In **Osei-Ansong & Passion International School vs. Ghana Airports Co. Ltd. [2013-2014] 1 SCGLR 25**, this court quoted with approval the dissenting opinion of Francois JSC in **Dzotepe vs. Hahormene III [1987-1988] 2 GLR 681** at page 701, where the eminent jurist stated that:

> *"There is no denying the fact that a judgment obtained by fraud is in the eyes of the court no judgment, as it is not founded on the intrinsic merits of the case, but is borne of an attempt to overreach the courts by deceit and falsehood: see Duchess of Kingston v Case (1776) 20 St Tr 355 and Lazarus Estates Ltd v. Beasley [1956] 1 All ER 341. But the fact that courts abhor fraud should not make them insensitive to the just claims of victorious parties. The judicial edifice was not constructed to lend a ready ear to every cry of fraud from suitors who have lost on the merits. If charges of fraud are not examined closely, the stratagem would subvert the very administration of justice and undermine the hallowed principle that a victorious party is entitled to the fruits of his judgment and should not be deprived of his victory without just cause. In effect, fraud must be clearly set out and effectively established. If this requirement is satisfactorily discharged, the edifice erected on it however imposing must fall, but short of this, a solemn declaration in a party's favour by a competent court should not be lightly disturbed."*

In the circumstances we hold that the Defendant/Appellant has not succeeded in establishing ground (a) of the grounds of appeal which is, therefore, dismissed.

GIFTS:

Closely linked to the first ground of appeal is ground (d) of the grounds of appeal to the effect that "*the Court of Appeal erred when it failed to consider properly the fact that once the gift was denied by the grantors of the 1st Defendant/Respondent/Appellant, the presence of the Plaintiff/Appellant/Respondent's grantor to testify at the trial was crucial in satisfying the evidential burden placed on the Plaintiff/Appellant/Respondent in an action for declaration of title.*"

Under this ground of appeal, Counsel referred to paragraph 14 of the statement of defence which can be found at page 163 of Volume 1 of the ROA and paragraph 9 of the witness statement of DW1 which can also be found at page 201AZ of the ROA and submitted that the gifts of the land to the Plaintiff/Appellant's grantor, Christian Besa Yao Ahiabor, allegedly, made by Joseph Abli Charway, was never made. According to Counsel, "*the onus was therefore on the Respondent to prove that the land was indeed gifted to his grantor and this the Respondent failed to do".* Counsel submitted further that *"since the Respondent's title was derivative, the Respondent had to demonstrate to the court that its grantor had a valid title to pass to the Respondent and this could only have been done by calling its grantor as a witness to testify to the issue of the gift".*

Underlying the argument of Counsel for the Defendant/Appellant is a supposition that it was only by the adduction of the Plaintiff/Respondent's grantor's viva voce evidence that the Plaintiff/Respondent could prove that the land was conveyed to him. The Plaintiff tendered in evidence exhibits C, D, and E. These exhibits can be found at pages 201R to 201AJ of Volume 1 of the record of appeal (ROA). These conveyances were duly registered with the Deeds Registry. Exhibit C, for instance, bears Land Registry No. 2443/1990, exhibit D bears Land Registry No. 2939/1990 and exhibit E is registered with Land Registry No. 3016/1990. By these conveyances, various parcels of land were conveyed by Joseph Abli Charway to the Plaintiff/Appellant's grantor, Christian Besa Yao Ahiabor. These Deeds were all tendered in evidence by the Plaintiff/Respondent in

proof of the title of his grantors to the land gifted to him and by extension in proof of the grant made to the Plaintiff company herein. The Defendant failed to prove its allegation that the Deeds of Conveyance registered by the Plaintiff/Appellant's grantor were procured by fraud. The mere averment in the statement of defence that the Defendant/Appellant denies the gift made to the grantor of the Plaintiff/Respondent, in the circumstances of this case, is not enough. For, section 25 of the Evidence Act invokes a conclusive presumption in favour of the Plaintiff/Appellant's grantor in respect of the parcels of land conveyed by the Deeds of Gift. Section 25(1) of NRCD 323 provides that:

> *"25. Facts recited in written instrument*
>
> *(1) Except as otherwise provided by law, including a rule of equity, the facts recited in a written document are conclusively presumed to be true as between the parties to the document, or their successors in interest."*

Thus, under the circumstances it is only where the Defendant/Appellant is able to point to a rule of law or equity that nullifies the gifts; that the validity of the conveyances in exhibits C, D and E could be swept away. The Defendant/Appellant alleged fraud, which is also a crime, against the conveyances but as pointed out, the Defendant/Appellant failed to prove fraud against the various Deeds of Gift. The Defendant/Appellant can therefore not hold the conveyances to ransom by a mere denial of the gifts without more when a conclusive presumption debars them from so doing. In **Adei & Adei vs Robertson & Sempe [2017-2020] 2 SCGLR 447**, this court stated the principle to the effect that:

> *"The law was settled that unless a document tendered in evidence was invalid on ground of breach of a statute or had been shown not to be authentic, a court of law would consider it favourably in preference to inconsistent oral testimony."*

As already stated, the Deeds of Gift from which the Plaintiff/Respondent traces its root of title were all registered under the Land Registry Act, 1962, Act 122 (now repealed by the Land Act, 2020, Act 1036). The Defendant/Appellant's attempt to ascribe invalidity to the Deeds by its plea of fraud failed. The Deeds therefore remain sacrosanct and no viva voce evidence was required from the Plaintiff/Respondent's grantor before the validity of the Deeds of Gift could be upheld. A fortiori, the Plaintiff/Respondent discharged the legal and evidential burden imposed on it when it gave evidence and tendered the unimpeached Deeds of Gift. The learned trial Judge was therefore wrong when she held in her judgment at page 380 Volume 2 of the record that the *"Plaintiff did not provide any evidence to prove that the requisite persons who ought to be present to witness the presentation of the 'thank you' or 'aseda' were indeed present at the time"*. Again, the learned trial Judge misapprehended the facts when she held at page 383, Volume 2 of the record that *"from the totality of the evidence before this court, I will find that the Plaintiff has failed to prove their predecessor-in -title held a valid title to the land in dispute. Not having a valid title their grantor could not give a valid title to the Plaintiffs, and I so hold".* Again, at page 386 Volume 2 of the record the learned Judge held that "*I find that the Plaintiff has failed to prove the root of their title to the land".*

These findings by the learned trial Judge are not borne out of the evidence adduced at the trial. The Court of Appeal was therefore right when it set aside the impugned findings made by the trial Judge and upheld the validity of the gifts made by Joseph Abli Charway to the Plaintiff/Appellant's grantor, Christian Besa Yao Ahiabor as expressed in exhibits C, D and E herein. After examining the evidence adduced before a trial court, if an appellate court, be it the first or the second appellate court, such as this court, comes to the conclusion that a finding of fact made by a trial court is not rooted in the admissible and cogent evidence placed before the trial court, it is within the powers of the appellate court and indeed, the court is legally bound to set aside the impugned findings of fact

and substitute them with the findings which bear support from the admissible evidence. See **Nana Asiamah Aboagye vs Abusuapanyin Kwaku Apau Asiam [2019-2020] 1 SCLRG 712.**

We find no merit in ground (d) of the grounds of appeal and the same is hereby dismissed.

In the second ground of appeal, that is ground (c), the Appellant says that *"the Court of Appeal erred when it considered the issue of vesting assent and capacity when same was not an issue before the trial court which would have afforded the 1st Defendant/Respondent/Appellant the opportunity to provide the required proof."* We wish to point out that this ground of appeal is self-defeating in that, the Court of Appeal is not the place for the Defendant/Appellant to provide evidence of their possession of a Vesting Assent and particularly so if one existed at the time evidence was being given before the trial Court. The circumstances under which a party may adduce fresh evidence before the Court of Appeal is very much circumscribed. Adduction of fresh evidence before the Court of Appeal does not come as of right but within strict limits. For that reason, rule 26 of the Court of Appeal Rules, 1997, CI. 19 provides that:

> 26. New evidence on appeal
>
> (1) It is not open as of right to a party to an appeal to adduce new evidence in support of the original case but, in the interests of justice, the Court may allow or require new evidence to be adduced.
>
> (2) Evidence allowed under subrule (1) shall be in the form of an oral examination in Court, an affidavit or a deposition taken before an examiner or commissioner who the Court may direct.

(3) A party may, by leave of the Court, allege the facts essential to the issue that have come to the knowledge of that party after the decision of the Court below and adduce evidence in support of the allegations.

The point is that evidence which was available or evidence which could have been obtained and tendered at the trial but which was not put in evidence to form part of the proceedings to enable it to be considered by the trial Judge in the evaluation of the overall evidence before the trial court would generally not be received in evidence on appeal. See: **Larbi vs Tema Development Corporation [2017-2020] 1 SCGLR 171; Republic vs. Adamah-Thompson and Others; Ex parte Ahinakwah II (substituted by) Ayikai [2012]1 SCGLR 378.**

The finding that the grantors of the Defendant/Appellant did not have capacity to convey the property in dispute to the Defendant/Appellant herein by virtue of their lack of a Vesting Assent was made by the Court of Appeal from the evidence on record. It is not something new that was conjured by the Court of Appeal outside the record. If the grantors had a Vesting Assent in respect of the property which they allegedly conveyed to the Defendant/Appellant, they would have said so in the Deed of Lease, exhibit 1 by which they purported to convey the land in dispute. Exhibit 1 shows clearly that the disputed land was conveyed to the Defendant/Appellant as though it was originally acquired by the named lessors (grantors) when the evidence on record shows that they allegedly inherited the property from their deceased father, Joseph Abli Charway. The law is quite clear that if fresh evidence would not be required before a legal issue could be comprehensively dealt with on appeal, and, to the extent that there exist on the record the evidence which will form the basis for the discussion of a point of law, an appellate court is at liberty to raise the issue and discuss same on appeal even if the parties have not averted their mind to same. See: **Fatal vs Wolley [2013-2014] 2 SCGLR 1070 @ 1075.**

In his submission under this ground of appeal, Counsel for the Defendant/Appellant referred to the case of **Boya vs. Mohammed (substituted by) Mohammed & Mujeeb [2017-2020] 1 SCGLR 997**. In particular Counsel referred to holding three of the case where the Supreme Court held that "by virtue of the rules on intestacy contained in section 4(1)(a) of PNDCL 111, following the death of the father of the defendants and their mother the original first defendant, the property devolved upon the children and as such they had an immediate legal interest in the property. Consequently, they were competent to defend and/or sue in respect of the property and either of them acting together or any of them acting on behalf of the others might seek an order of declaration of title to be made in their favour." Counsel then submitted that "by parity of reasoning, if beneficiaries without a vesting assent are competent enough to mount an action or defend an action in court, then beneficiaries without a vesting assent should be able to alienate land without a vesting assent". This submission by Counsel was made against the backdrop that the Court of Appeal had in its judgment, particularly, at page 115 of the ROA, stated, among others, that:

> *"The Respondent's grantors as beneficiaries of the estate of their deceased father never tendered in evidence a vesting assent clothing them with legal capacity or authority to deal with the land, they claim they inherited from their father upon his demise. There is lack of evidence of that fact and requirement of the law. On the authorities, we think the children as beneficiaries lacked the legal capacity to alienate the disputed property to the Respondent. The settled position of law is that until an* ***administrator*** *or beneficiary vested an inherited property in himself and registered it in accordance with S.24 of the Land Registry Act, 1962, Act 122, he lacked the legal capacity to alienate it."*

We recognise that the Court of Appeal gave its judgment on the 28th April 2022 and apart from the fact that as at 28th April 2022, the Land Registry Act, 1962, Act 122 had been repealed by section 282(1)(c) of the Land Act, 2020, Act 1036 and so registration of Deeds

can no longer be done under Act 122; but, instead, under chapter six of the Land Act, 2020, Act 1036 which received Presidential assent on the 23rd December 2020, the law as espoused by the Court of Appeal herein is substantially correct. Indeed, the position had been clarified in **Conney vs Bentum-Williams [1984-86] 2 GLR 301**, (a case quoted by the Court of Appeal) at page 316 that:

> *"It is therefore necessary that before carrying out the intentions of the testator, the will must first be admitted to probate and thereafter a beneficiary of any real estate under the will must have a vesting assent executed in his favour by the executors to whom probate has been granted. Until this is done, any purported sale of the real estate by the beneficiary or the devisee will be of no legal consequence and the purchaser thereof will not have a valid title. The defendant's vendors were in this serious predicament; for the evidence clearly showed that no vesting assent was executed in their favour by the executors in respect of the disputed land and this has still not been done. It followed that they could not transfer or confer a valid and effective title on the defendant."*

The above position of the law was affirmed by this court in **Okyere (Decd) (substituted by) Peprah vs. Appenteng & Adomaa [2012] 1 SCGLR 65** at page 75 that:

> *"A devisee cannot sue or be sued in relation to the devised property before a vesting assent has been executed in his or her favour. Accordingly, in the absence of a vesting assent executed in favour of the second defendant she could neither sue nor be sued on her devise."*

In re-stating the law as quoted above, in the instant matter, the Court of Appeal went as far as stretching the law to cover administrators; as that, **administrators** also require vesting assent before they could also alienate immovable properties over which they have been granted letters of administration. That is not the position of the law. This is because section 97(1) of the Administration of Estates Act, 1961, Act 63, gives administrators the

free hand to alienate properties over which they have control as administrators without the need to first obtain an assent in their favour. Section 97(1) of Act 63 states that:

> *"97. Validity of conveyance and revocation of representation*
>
> *(1) A conveyance of an interest in movable or immovable property made to a purchaser before or after the commencement of this Act by a person to whom probate has been granted or letters of administration have been granted is valid, despite a subsequent revocation or variation before or after the commencement of this Act, of the probate or administration."*

It will be observed that in both Conney vs Bentum-Williams (supra), and Okyere (Decd) (substituted by) Peprah vs. Appenteng & Adomaa (supra), the courts were careful not to stretch the statement of the law to cover administrators but limited the position of the law to the need for beneficiaries and or devisees under estates, devolving whether by testate or intestate, to have vesting assent executed for them before they could deal with properties concerning an intestate's or testator's estate. Even, in the Boya vs. Mohammed (substituted by) Mohammed & Mujeeb (supra), this court did not say that the children of an intestate could alienate properties of the intestate when a vesting assent had not been executed in their favour. Gbadegbe JSC, who delivered the judgment of the court explained the rationale behind the decision at page 1006 of the report when he stated that:

> *"In the instant case, it is important to note that the defendants when sued, did not specifically seek an order for declaration of title but by virtue of the issues that turned on the pleadings, their title was put in issue as there was a claim for perpetual injunction directed against their continued occupation of the disputed property. We have no doubt that in the circumstances it was proper for their counterclaim to have been allowed by the Court of Appeal to avoid the same issue being re-litigated in the future"*

In the context of the above explanation, the decision in Boya vs. Mohammed (substituted by) Mohammed & Mujeeb (supra), referred to by Counsel for the Defendant/Appellant cannot be said to have laid down a general proposition to the effect that beneficiaries of estates can alienate the properties concerned before a vesting assent is executed in their favour. The argument by Counsel for the Appellant to the effect that *"beneficiaries without a vesting assent should be able to alienate land without a vesting assent"* can therefore not be correct.

It is very important to state that the grantors of the Defendant/Appellant herein, did not make the grant of the land, subject matter of dispute to the Defendant/Appellant herein in their capacity as administratrixes of the estate of the late Joseph Abli Charway. On the contrary, the grant was made to the Defendant company by the grantors in their own right as if the property, subject matter of the grant, was acquired personally by them and in their own right. Exhibit 1, the Deed of Conveyance, which can be found at page 201BC of the ROA is very clear on this finding. It states, among others, that:

> *"THIS INDENTURE of lease is made the 30th day of April, In the year of our Lord Two Thousand and Fifteen (2014) (sic) Between Beatrice Komley Charway, Lilian Komley Charway, Comfort Komiokor Nuertey and Beatrice Komiokor Charway all of Joseph Abli Charway family IN THE Greater Accra Region of the Republic of Ghana (hereinafter called the LESSOR) which expression shall where the context so admits or request shall their (sic) successors in office and assigns) (sic) of the one part AND SPECTRUM INDUSTRIES PVT LTD. OF PLOT NO.15, NEAR COCOA COLA (sic) ROUND ABOUT in the region aforesaid hereinafter called the LESSEE which expression shall where the context so admits or requires include its heirs successors personal representatives and assigns of the other part…."*

There is not a single recital in exhibit 1 to show that the grantors of the Defendant/Appellant conveyed the land in dispute as administratrixes of the estate of

Joseph Abli Charway (deceased). In so far as the evidence on record shows that the land was not acquired by the grantors of the Defendant in their personal right, they have no right in law to convey the land as they purported to do in exhibit 1. If they wanted to convey as administratrixes of the estate of Joseph Abli Charway (deceased), they should have stated that fact clearly on the Deed of Conveyance, exhibit 1 herein. The learned Justices of the Court of Appeal were therefore right in holding that the grantors of the Defendant/ Appellant lacked capacity to convey the land in dispute to the Defendant/Appellant as they purported to do.

Quite apart from their lack of capacity to convey the land as they sought to do, in the instant matter, the land in dispute has been ascertained to be part of the land which the father of the Defendant/Appellant's grantors had already conveyed by way of gift to the Plaintiff/Respondent's grantor as shown by exhibit C, D and E. Again, the learned Justices of the Court of Appeal found this as a fact when they stated at page 107 Volume 3 of the record that:

> *"The Charway family at the time it purported to dispose of the disputed land to the respondent had already divested itself of its interest. Therefore, the Charway family has no land again to sell to the respondent under the nemo dat quod non habet rule when the family has not taken any lawful steps to set aside the gift. The nemo dat quod non habet rule applies whenever an owner of land who had previously divested itself of title in the land previously owned by him to another person, attempts by a subsequent transaction to convey title to the new person in respect of the same parcel of land cannot be valid"*

This position of the law had long been recognised by our courts to be so; therefore, in **Dovie & Dovie vs Adabunu [2005-2006] SCGLR 905**, this court held that:

> "An effective customary conveyance divested the grantor of any further right, title or interest in the land to convey or grant to a subsequent grantee. Consequently,

when the Asere stool, through the Akwashong Mantse, purported to gift the land sold to the Plaintiff in 1947 to Susanna Ama Quansah, the defendants' grantor in title, in 1954, the stool had no interest, title or right to confer on her. Her deed of gift was therefore a nullity: See **Hammond v Odoi [1982-83] 2 GLR 1215** where Adade JSC at 1304, SC said:

> *"where a prior oral customary grant can be established, no amount of subsequent conveyances, registered or not, can defeat the customary title. And in this case the prior oral customary grant to the plaintiff was more than sufficiently established. Even if it were held to be otherwise, the admittedly prior possession of the land by the plaintiff, a subject of the stool, is enough to defeat any subsequent conveyance"*

See also Sarkodie vs F K A Co. Ltd. [2009] SCGLR 65 @ 70.

It follows therefore that even if the grantors of the Defendant/Appellant herein had conveyed the land in dispute in their capacity as administratrixes of the estate of Joseph Abli Charway (deceased), the said conveyance would still not be competent to pass any title to the said land to the Defendant/Appellant in view of the fact that the same land had already been conveyed as per exhibits C, D and E herein by Joseph Abli Charway (deceased) to the Plaintiff/Respondent's grantor, Christian Besa Yao Ahiabor and was, as a result, unavailable to be re-granted to the Defendant. We hold consequently that the purported grant to the Defendant/Appellant is a nullity. This ground of appeal has therefore not been made out and it is therefore dismissed.

Next, the Appellant says that *"the Court of Appeal erred when it failed to make a determination on the allegation of fraud leveled against the 1st Defendant/Appellant and 2nd Respondent."*

The Court of Appeal, had observed in its judgment at page 109, Volume 3 of the record that:

"Even if the appellant was unable to strictly prove fraud against the respondent, the Lands Commission itself by its own rules and regulations owed it a duty to the general public to ensure that there was no double registration of the same piece or parcel of land. Having regard to the fact that subsequent events showed that it was the same piece (of land) which was earlier on registered for the appellant it was reckless for the same Lands Commission to have registered for the respondent"

Finally, the Court of Appeal made an order for *"the cancellation and or expunging of the respondent's Land Title Certificate No. TD 1305 from the records of the Land Title Division of the Lands Commission"*. It is against this background that the Defendant/Appellant has raised this very ground of appeal.

Under this ground therefore, it has been argued on behalf of the Defendant/Appellant that the Land Title Certificate was granted to the 1st Defendant by the Lands Commission. Counsel referred to section 37(1) of the Evidence Act, 1975, NRCD 323 and submitted that the maxim *omnia praesumuntur rite esse acta* should be applied to the Lands Commission and thereby presumed that the Lands Commission granted the Land Title Certificate regularly. Section 37(1) of NRCD 323 provides that:

"37. Official duty regularly performed

(1) It is presumed that an official duty has been regularly performed."

The presumption stated in section 37(1) is a rebuttable presumption as provided in section 30 of the Evidence Act that *"30. rebuttable presumptions include, but are not limited to, those provided in sections 31 to 49 and 151 to 162."* What this implies therefore is that as long as credible and cogent evidence to the contrary is not adduced by the party against whom the presumption operates, it shall be presumed that official act has been regularly performed. Hence, section 21(a) of NRCD 323 provides that:

"21. Applying rebuttable presumptions

In an action where proof by a preponderance of the probabilities is required,

(a) a rebuttable presumption requires the tribunal of fact to assume the existence of the presumed fact, unless the party against whom the presumption operates proves that the non-existence of the presumed fact is more probable than its existence"

In **Ghana Ports & Harbours Authority & Captain Zeim vs. Nova Complex Ltd [2007-2008] SCGLR 806**, this court held that:

"The common law rule of presumption omnia praesumuntur rite et solenmiter esse acta, which has gained statutory recognition under section 37(1) of the Evidence Act, 1975, NRCD 323, providing that: 'It is presumed that an official duty has been regularly performed' applies not only to official, judicial and governmental acts, but also to duties required by law. Section 30 of the NRCD 323 stipulates clearly that section 37(1) falls in the class of presumptions which by virtue of the fact that they permit contrary evidence to be led, are described as rebuttable, conditional, inclusive or disputable presumptions. These presumptions have prima facie effect only and the presumed facts may therefore be displaced by evidence. A rebuttable presumption, in the language of section 20 of the Evidence Act, 1975: "imposes upon the party against whom it operates the burden of producing evidence and the burden of persuasion as to the non-existence of the presumed fact." It follows that whenever the maxim is applied, the person against whom it is invoked and who is entitled to lead evidence to refute the presumption, is at liberty to prove that there was in fact no due regularity or performance of the official or statutory duty in question. Evidence may be led to show also, for example, that the person is not a public officer or is not duly authorised so to act, or that the person acted outside the limits of his or her authority, or that they acted in bad faith or that theirs was an improper exercise of discretion."

In the instant matter, after the Defendant/Appellant had acquired the land in dispute, the Defendant submitted its conveyance to the Lands Commission for title registration. The lands Commission, according to the Defendant/Appellant, caused a publication to be made in the Weekly Spectator Newspaper. Thereafter, the Defendant/Appellant states in paragraph 12 and 13 of its statement of defence that:

> *"12. The defendant says that no adverse claim was received by the Land Title Division who proceeded to register Defendant's interest in the land and duly issued the land title certificate.*
>
> *13. The Defendant denies paragraphs 11, 12, 13 and 14 of the statement of claim and says in response that the Lands Registration Division of the Lands Commission responded to the Plaintiff's letter dated 15th day of November 2016 and indicated that the land delineated in the Deed of Gift submitted [by] lawyers for the Plaintiff does not affect the land being registered in the name of the Defendant."*

A cursory look at the pleading in paragraphs 12 and 13 of the statement of defence filed by the 1st Defendant quoted above, shows clearly that the 1st Defendant was not candid with the facts and events leading to the issuance of the Land Title Certificate to it. For, if it was true that "no adverse claim was received by the Land Title Division who proceeded to register Defendant's interest in the land and duly issued the land title certificate", how come that the Lands Registration Division of the Lands Commission, had to respond to the Plaintiff's letter?

The Plaintiff/Respondent's representative had testified in paragraphs 12, 13, 14, 15, 16 and 17 of the Witness Statement, which can be found at page 201C of Volume 1 of the record, that:

"12. In the course of processing the title, it received information that the 1st Defendant had also applied to the Land Registration Division of the 2nd Defendant's office to be registered as proprietor of the same land.

13.By a letter dated 22nd day of August 2016, Plaintiff's solicitor wrote to the Land Title Registrar caveating the attempted registration of the land by the 1st Defendant. The said letter is attached and marked as exhibit H.

14. By a letter dated 15th day of November 2016, the 2nd Defendant responded to the Plaintiff solicitor's caveat and indicated that the land delineated in the Deed of Gift submitted by the Plaintiff's solicitors does not affect the land being registered in the name of the 1st Defendant herein. The said letter is attached and marked as exhibit J.

15. Plaintiff got to know that inspite of its caveat and notwithstanding the fact that the land remained registered in the name of its grantor, the 2nd Defendant, without regard to its own processes side stepped registered interest of the Plaintiff's grantor and Plaintiff's caveat and proceeded to issue a Land Certificate with registration No. TD 13057 Vol. 018 Folio 2852 in the name of the 1st Defendant.

16. The 1st Defendant's Certificate could only have been obtained by fraud in that the Certificate was issued with clear knowledge of the 1st Defendant and the 2nd Defendant that the land was registered in the name of the Plaintiff's grantor and that the 1st Defendant procured the Certificate while the Plaintiff's caveat was still pending to be addressed by the 2nd Defendant.

17. That the issuance of the Certificate by the 2nd Defendant to the 1st Defendant is in clear error and contrary to law"

The 1st Defendant/Appellant is not unaware of the illegality perpetrated by the Lands Commission in the processing of its documents and the subsequent issuance of the Land Title Certificate to the 1st Defendant/Appellant. This is because in paragraph 9 and 10 of

its Witness Statement at page 201AW Volume 1 of the Record, Ernest Daniels testifying for the 1st Defendant, stated in clear language that:

> *"9. The 1st Defendant was informed in one of its follow-ups at the 2nd Defendant that our registration had been objected to by the Plaintiff who claimed to have leased the land from one Christian Besah Yao Ahiabor*
>
> *10. I am aware that the 2nd Defendant responded to the objection and indicated in their letter dated 15th November 2016 that the land to be registered by the 1st Defendant falls outside the site plan in the Deed of Gift presented by the Plaintiff to the 2nd Defendant. The letter is attached and marked and exhibited as 4"*

It must be pointed out that the laws of Ghana are binding on every Ghanaian living in Ghana including corporate entities like the 1st Defendant/Appellant. And so, the 1st Defendant/Appellant owed it as a duty to itself to instruct the Lands Commission to halt the registration in the face of the caveat lodged by the Plaintiff/Respondent against the registration of the Deeds presented by the 1st Defendant in order that the right procedure for the settlement of the dispute might be followed. On the contrary, the 1st Defendant was happy to make the averment that, an officer of the Lands Commission wrote a letter in response to the Plaintiff's and stated that the land being registered for the 1st Defendant was not the same as the land that the Plaintiff had applied to be registered in its name. The law has set out the procedure to follow to settle issues of double or multiple applications for the registration of the same land by different persons.

It must be placed on record that at the time of the presentation of the various conveyances to the Lands Commission for title registration by the parties herein, the operative law was the Land Title Registration Act, 1986, PNDCL 152. In **Boyefio vs. NTHC Properties Ltd [1997-98] 1 GLR 768**, this court, per Acquah JSC discussed in detail, the procedure to follow in settling disputes arising out of multiple applications for title registration by

different applicants. (Notwithstanding the length of the ratio, we think it is worth quoting in order to drum home the issue under discussion in this appeal). The court stated, among others, at pages 777 to 779 that:

> *"The above exposition, in brief, outlines the main disputes under PNDCL 152 envisaged to arise in the course of registering title to land and interests therein at the Land Title Registry: disputes relating to conflicting claims under section 23(6) of PNDCL 152; disputes relating to conflicting Act 122 registered instruments under section 113(2) of PNDCL 152; disputes relating to the Land Registrar's rejection to register an applicant under section 21(2) of PNDCL 152; and finally disputes relating to the accuracy of boundaries and situations of land on the registry maps and plans under section 37(2) of PNDCL 152. Of course, each of the above four main disputes or a combination of them may give rise to further disputes in the course of registration. However, whatever be the complex disputes which may arise from those envisaged under the PNDCL 152, the important point is that the disputes set out above are the "disputes under this Law" in respect of which, in the language of section 12(1) of PNDCL 152, no action shall be commenced in any court until the procedures for settling them under PNDCL 152 have been exhausted. For it goes without saying, that each of the four main disputes is related to land or an interest in land. What then are the procedures to be exhausted?*
>
> *(b) Procedure under PNDCL 152*
>
> *The procedure for settling each of the four main disputes outlined above is evidenced from the references directed in sections 13(2), 21(2), 23(6), and 37(2) of PNDCL 152. In each of these sections, the dispute is to be referred to the adjudication committee set up under section 22 of PNDCL 152 which reads:*
>
> *"22. (1) There shall be established in a registration district a Land Title Adjudication Committee (in this Law referred to as 'the Adjudication Committee').*

(2) Every Adjudication Committee shall consist of a chairman and two other persons all of whom shall be appointed by the Secretary on the advice of the Board.

(3) There shall be referred to the Adjudication Committee either by the Land Registrar or any interested person any dispute relating to the registration of land or interest in land.

(4) The Adjudication Committee shall determine any dispute referred to it under subsection (3) of this section."

Now, section 22(3) and (4) of PNDCL 152 clearly and unambiguously define the jurisdiction of the adjudication committee as being the determination of any dispute relating to the registration of land or interest in land in any registration district. And as already shown, these disputes are directed under section 13(2), 21(2) 23(6) and 37(2) of PNDCL 152 to be referred to the adjudication committee for determination. The adjudication committee is, therefore, not a tribunal with general jurisdiction to handle any land suit in a registration district but an internal or domestic tribunal of the Land Title Registry to handle disputes likely to occur in the course of the registry's exercise to register title to land and interests therein. It is purely a domestic tribunal. Thus, in the memorandum to the law, the rationale for enacting section 12 of PNDCL 152 is stated, inter alia, as follows:

"The object of this provision is to discourage expensive litigation over land by compelling the parties to make use of the Land Title Adjudication Committees under Sub-Part II of Part II of this Law, which will operate as domestic tribunals and free from technicalities."

(The emphasis is mine.) Accordingly, as a domestic or internal tribunal not subject to the procedures and technicalities of the courts, sections 27 to 33 of PNDCL 152 together with regulations 27 to 50 of the Land Title Regulations, 1986 (LI 1341), set out the procedure and modus operandi of the adjudication committee. Actions are initiated before the adjudication committee by filling a special form, set out in the First Schedule to LI 1341,

and the disputed land is described by reference to the Land Title Registry map. If there is no appeal to the High Court against the final decision of the adjudication committee, the Land Registrar is then mandated under section 33(2) of PNDCL 152 to "enter in the land register and other records of [the] Registry such of the contents of the adjudication record as may be prescribed."

It is therefore abundantly clear from the prescribed jurisdiction, procedure and effect of the decision of the adjudication committee that the said committee is not intended and could not have been intended to assume the jurisdiction of the courts in land suits in a registration district. The adjudication committee has been designed to be a domestic tribunal within the Land Title Registry to simplify and speed up the determination of rival claims and other disputes arising in the course of the Land Registry's registration of title to land and interests therein.

(c) Scope of section 12(1) of PNDCL 152

From the above analysis of "the disputes under this Law" and the "procedures" mentioned in section 12(1) of PNDCL 152, it becomes apparent that the true import of section 12(1) of PNDCL 152 is that whenever in a registration district, a dispute arises in the course of a registration of title to land or interest therein in the Land Title Registry, no party to such a dispute shall commence any action in respect of this dispute in any court, until the Land Title Adjudication Committee has had the opportunity of first determining the said disputes. Accordingly, the ban on taking actions in the courts as imposed in section 12(1) of PNDCL 152, is restricted solely to actions relating to disputes arising in the course of the Land Title Registry's exercise of registering such titles to land and interests therein.

No where is it mentioned in the Land Title Registration Act, 1986, PNDCL 152 that where there are more than one application for title registration of the same land, the Land Officer can arrogate to himself and determine the dispute by unilaterally writing a letter, exhibit

J herein, to inform one of the parties that the land sought to be registered by the second applicant, in this case the 1st Defendant/Appellant herein, is different from the parcel of land in respect of which an application had earlier been presented and then go ahead and register and issue Title Certificate to the 2nd Applicant. The letter (exhibit J), later, turned out to be false as per the evidence of the Surveyor who testified to the effect that the applications for registration by the parties affected the same parcel of land. See page 294 Volume 2 of the record. In **Brown vs. Quarshigah [2003-2004] SCGLR 930**, which was quoted by the Court of Appeal, this court stated in very emphatic terms that:

> *"Procuring a lease and a subsequent land certificate in circumstances when the Plaintiff, on the evidence, knew or ought to have known that the land had been previously granted to a prior incumbrancer, is tantamount to fraud"*

We have pointed out earlier that per paragraphs 12 and 13 of the statement of defence as well as paragraphs 9 and 10 of its Witness Statement quoted above, 1st Defendant had actual knowledge of the fact that the Plaintiff/Company had earlier submitted an application for the land in dispute to be registered in the name of the Plaintiff/Respondent. Further to the above, the evidence on record shows, without a shred of a doubt, that the land in dispute had, as far back as 1990, been registered in the name of Christian Besah Yao Ahiabor as shown by exhibit G, a Search Report given by the Lands Commission. It is clear from the evidence on record that the 1st Defendant/Appellant deliberately chose to remain in ignorance of the Deeds registration of the disputed land in the name of the Plaintiff/Respondent's grantor, which, under the Lands Registry Act, 1962, Act 122, (then the operative law), constituted a notice to the whole world. Indeed, at page 270 of Volume 2 of the record, the 1st Defendant admitted that it failed to conduct a search in respect of the disputed land at the Lands Commission before buying the land from its grantors. Again, at page 271 to 272 Volume 2 of the record, the 1st Defendant further admitted that it made no enquiries from adjoining neighbours

before the acquisition of the land. It is also clear from the evidence that the 1st Defendant/Appellant limited its enquiries to its grantors who told the 1st Defendant/Appellant what it wanted to hear. It was pointed in **Brown vs Quarshigah** (supra) at page 954 of the report that

> *"The principle of caveat emptor is still a postulate of our law. A prospective vendor or purchaser of land cannot shift onto the shoulders of the existing owner the burden of informing them of encumbrance, title or interest held by him. In many cases it will not even be enough to conduct a search in the Deeds Registry or the Land Title Registry. The Register will fail to disclose many interests in land which have not been registered."*

In our opinion therefore, since the 1st Defendant/Appellant decided to remain in ignorance of the encumbrance by way of the prior Deeds registration of the disputed land in the name of the Plaintiff's grantor, the law will fix it with notice thereof; consequently, we hold that the action of the 1st Defendant in getting the Lands Commission to register its impugned conveyance and subsequently in issuing the 1st Defendant with Land Title Certificate is fraudulent on the part of the 1st Defendant/Appellant. We also hold that the action of the Lands Commission in ignoring the caveat filed by the Plaintiff/Respondent against the registration of the land in dispute in the name of the 1st Defendant and then subsequently, issuing the 1st Defendant/Appellant with a Land Title Certificate without following the procedure set out under the Land Title Registration Act for the resolution of registration disputes is not only fraudulent but also illegal as it infringes clear provisions of PNDCL.152 Accordingly, we hold that the Court of Appeal was right in ordering the cancellation of the Land Certificate issued to the 1st Defendant/Appellant herein.

WEIGHT OF EVIDENCE:

In the final ground of appeal, the 1st Defendant/Appellant says that "*the judgment is against the weight of evidence.*" This ground of appeal imposes a duty on this court to comprehensively examine the record of appeal and satisfy itself that the judgment, subject matter of appeal has support from the credible evidence adduced by the parties and admitted by the trial court. The Appellant has a corresponding duty to point out to this court, all the pieces of evidence on record which were ignored by the first appellate court and which if properly considered by the first appellate court would have turned the scales in favour of the Appellant. The Defendant/Appellant, again, under this ground of appeal has an added responsibility to point out to this court, all the pieces of evidence on record which were wrongly applied against the appellant which has resulted in a miscarriage of justice. See **Djin vs Musah Baako [2007-2008]1 SCGLR 686; Owusu-Domena vs Amoah [2015-2016] SCGLR 790.**

It has been submitted under this ground of appeal, among others, that Respondent herein failed to prove its root of title notwithstanding the denial by the Defendant/Appellant of the gift of the land in question, among others, to the grantor of the Plaintiff/Respondent. The Defendant/Appellant also says that if it is true that a gift of the land was made to the grantor of the Plaintiff/Respondent, the children of Joseph Abli Charway would have been invited to witness same. These submissions have already been discussed at length in this opinion.

The question we wish to ask is when did the gift made to Christian Besah Yao Ahiabor, the Plaintiff's grantor, come to the knowledge of the children of Joseph Abli Charway (deceased) and what steps did they take to have same set aside if no gift was ever made by their father? Exhibit G shows that the Lands Commission had noted that the land in dispute was part of land gifted to Christian Besah Yao Ahiabor on 12th September 1988. And, as already stated, the land in dispute forms part of the parcels of land conveyed to Christian Besah Yao Ahiabor and registered in his name in 1990. There is no evidence of

any challenge of the gift by the grantors of the Defendant/Appellant herein. Besides, the Defendant/Appellant failed to put forth any positive challenge to the gift made to the Plaintiff's grantor. They failed to invite their so-called witnesses who, allegedly, denied ever witnessing the Deeds of Gift exhibits C, D and E. In other words, Defendant failed to put forth a case worthy of an answer from the Plaintiff/Respondent herein. Hence, it became unnecessary for the Plaintiff to call its grantors to come and give any evidence.

The Defendant/Appellant further argues that the Plaintiff/Respondent failed to prove acts of possession as against the Defendant/Appellant whose grantors had a kiosk on the land in dispute. The Defendant/Appellant had, in paragraph 7 of its statement of defence, pleaded that its grantors inherited the disputed land from their father and took possession by walling the land. During cross examination however, DW1 who testified in support of the Defendant admitted that the wall was not built by the grantors. See page 291 Volume 2 of the record. Indeed, the Court appointed Surveyor also testified to the admission by the Defendants that the wall was put up by the adjoining neighbours. From the evidence, given the undisputed fact that the adjoining neighbours took their grant from the Plaintiff's grantors and have been in unchallenged possession of their land, a fact which is supported by the records in exhibit G which shows that in 2002, Christian Besah Yao Ahiabor, the Plaintiff's grantor made a conveyance of part of the adjoining lands to Eurofood (Gh) Ltd. and also to Afrotropic Cocoa Processing Ltd. in 2003, who have built their factories on the land and are operating from them without any let or hindrance, we hold that as against the Defendant's grantors who had only a kiosk on the land without more and in the light of the fact that the Plaintiff's grantors have a registered Conveyance on the land, we hold that on the preponderance of probabilities, the Plaintiff's grantors and by extension the Plaintiff/Respondent herein have proved sufficient acts of effective possession of the land in question than the 1st Defendant/Appellant and its grantors.

CONCLUSION:

After analysing the evidence on record as shown above, we are satisfied that the Plaintiff/Respondent herein, on the balance of probabilities, have proved their claim to the land as compared with the Defendant/Appellant. We are therefore satisfied that the judgment of the Court of Appeal is amply supported by the evidence on record. We therefore affirm the judgment delivered by the Court of Appeal and consequently, we proceed to dismiss the instant appeal.

S. K. A. ASIEDU

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

I.O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

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